



PROGRAM MEMO

Program Memo: Title 390, Protection and Safety, #6-2004

To: Holders of Title 390

From: Todd Reckling, Administrator
Office of Protection and Safety

Signed by: _____, Director
Department of Health and Human Services
_____ (Date)

Re: Use of Guardianship as the Permanency Objective

Effective Date: **January 15, 2005**

Duration: Until revised regulation is issued

Contact: If you have questions about this program memo, please contact Mary Dyer at (402)471-9331, or Becky Henderson at (402)471-9333, or either person by e-mail.

Citation: 390 NAC 6-004

One of the practices identified in our Child and Family Services Review was overuse of guardianship as a permanency goal. 390 NAC 6-004 currently provides direction regarding when guardianship can be considered as a possibility. Data from N-FOCUS and feedback from foster parents moving to guardianship seem to indicate that special attention needs to be given to whether the direction is being followed for individual children. The purposes of this memo are:

1. To remind staff of existing regulation about when guardianship might be appropriate;
2. To provide information about changes in 390 NAC 6-004 that are in draft and will be going to public hearing as a way to strengthen our approach to appropriate use of guardianship;
3. To provide information that must be considered by HHS staff and shared with foster parents in determining whether guardianship is the best choice for a child's permanency; and
4. To require development of an improvement plan if cases currently exist with inappropriate permanency objectives or concurrent plans of guardianship.

The paragraph below is based on the draft regulations. While they are very similar to current regulations, they provide clearer direction. One change to be noted is that the new guidelines increase the age of consideration for guardianship to age 14 for most children. Beginning **January 15, 2005**, Protection and Safety staff persons are to use the new guidelines in establishing and reviewing permanency objectives or concurrent plans for children, and in documenting the choice of guardianship. (Please refer to 390 NAC 2-001 Use of Consultation regarding the requirement for consultation by a worker

with the supervisor prior to changing a child's permanency objective.) The expectation is that Protection and Safety Administrators and Resource Development Administrators will assure that this memo is reviewed with all appropriate field staff to assure that they are aware of and implementing its contents.

By **February 15, 2005** each Service Area must develop an improvement plan to assure that by September 30, 2005, guardianship as a plan is being appropriately used, in keeping with Department guidelines and regulation. These plans are to be submitted to Todd Reckling.

Legal guardianship can be considered as the permanency objective for a child only when:

1. All efforts to reunify the child with his or her family have been exhausted and have been unsuccessful *or* the court finds no reasonable efforts are required; *and*
2. All efforts to effect adoption have been exhausted and have been unsuccessful; *or*, despite extensive discussion, a relative is unwilling to adopt because of family relationships but is willing to accept guardianship; *or* the child is Native American, and the tribal code or philosophy prohibits or strongly discourages termination of parental rights or adoption; *and*
3. The child is fourteen or older, and despite extensive discussion is unwilling to agree to adoption, *or* the child is the sibling of a child age fourteen or older for whom guardianship is the plan, and guardianship for both will allow the children to remain together; *and*
4. The child has a relationship with the prospective guardian and has lived successfully for a minimum of six months in the home of the guardian, *or* the worker has determined that the child will develop a relationship with a relative or foster parent who is committed to the guardianship plan; *and*
5. The prospective guardian and child can function effectively without Department supervision; *and*
6. The guardian is able and willing to support the child financially, or satisfactory financial arrangements can be made for support. If a guardian will need ongoing financial assistance to care for a child, guardianship subsidy will be pursued by the worker.

Documentation that a child's situation meets the above requirements must be made in the child's narrative on N-FOCUS.

Exception: Exceptions to the above-stated criteria require approval by Central Office, Protection and Safety. The exception request must be made by the Service Area Protection and Safety Administrator or designee, in writing, and sent to Mary Dyer, Program Specialist, with a copy to Margaret Bitz, Team Administrator. The request must include documentation as to why the choice of guardianship is in the child's best interest.

Additional Considerations: When considering use of guardianship as the permanency goal, the following information should be considered and discussed with the potential guardian.

1. Families who have subsidized guardianships cannot move into a subsidized adoption. In order to be eligible for subsidized adoption, the child must be a ward of the Department at the time of the adoption. (The only exception is a child who is SSI

eligible, as determined by the Social Security Administration. This child might be eligible for adoption subsidy without being in custody of an agency at the time of the adoption.)

2. It is likely that having the guardianship order issued by the juvenile court is preferable to having it done in county court. When a guardianship is established by the juvenile court, best interest of the child continues to be the court's paramount consideration. Should a parent attempt to have the guardianship legally dissolved in order to regain custody, the court would follow that consideration. On the other hand, when the juvenile court case is dismissed and the guardianship is established in county court, the legal principle changes to one that gives parental rights primary consideration, even above those of the guardian. Therefore, if the parent attempts to have the guardianship legally dissolved in order to regain custody, the guardian likely will have to prove that the parent is unfit. The guardian could be faced with cost of a legal battle, and the child's permanency could be jeopardized.